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Supreme Court of the United States

October Term, 1969

NO. 661

HELLENIC LINES LIMITED and UNIVERSAL CARGO CARRIERS, INC., *Petitioners,*

Against

ZACHARIAS RHODITIS, *Respondent*

MOTION TO LEAVE TO FILE ACCOMPANYING BRIEF AS AMICUS CURIAE IN THE ABOVE ENTITLED AND NUMBERED CAUSE

The American Trial Lawyers Association by and through Arthur J. Mandell of Mandell & Wright, Houston, Texas, a member of the Bar of this Court, as a member of the Admiralty Section of the American Trial Lawyers Association, and on behalf of the American Trial Lawyers Association, respectfully petitions this Court for leave to file a brief amicus curiae on behalf of Respondent herein, and if granted, for this Honorable Court to consider the arguments of cases in point following this statement of interest.

INTEREST OF THE AMERICAN TRIAL LAWYERS ASSOCIATION—ADMIRALTY SECTION

The American Trial Lawyers Association is a national Bar Association consisting of more than 20,000 lawyers, primarily engaged in the practice of tort law. The Admiralty Section of this Bar Association consists of a substantial number of attorneys specializing in maritime law. Said Association is vitally interested in the outcome of this case, involving as it does, the important question of whether a legally admitted and permanent resident of and domiciled in the United States, conducting business as a shipowner from New York City should not, like shipowner citizens of the United States, be subject to the same laws as United States shipowners. Or to put it differently, since United States shipowners, operating foreign registered-vessels with foreign crews, are subject to the laws of the United States, including the Jones Act, should not a legally admitted permanent resident alien enjoying the full benefits of American Law be also subject to the same laws.

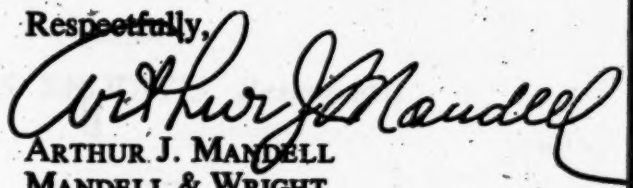
The ever increasing number of foreign flag vessels now doing business in the United States, crewed with foreign seamen but either owned, operated or controlled by American citizens subject to the laws of the United States, makes it fair and just to subject a permanent resident of the United States, conducting his business in and from the United States, obtaining its income from cargo shipped to or from the United States, to the same laws as American citizens conducting the same kind of business and with whom it is competing. This Court should resolve this and place such operations on the same footing as American

shipowners. The exodus of American shipping to foreign flags while its beneficiaries enjoy the protection of United States Laws without the obligation to comply with them places an economic burden on American shipping and to our entire economy.

The American Trial Lawyers Association has obtained and filed the written consent of counsel for all parties to file this brief as amicus curiae on Respondent's behalf.

It is respectfully prayed that this Honorable Court accept this brief Amicus Curiae.

Respectfully,



ARTHUR J. MANDELL
MANDELL & WRIGHT
19th Floor
First National Life Building
Houston, Texas 77002

For and on behalf of the American Trial Lawyers Association.

Supreme Court of the United States

October Term, 1969

NO. 661

HELLENIC LINES LIMITED and UNIVERSAL CARGO CARRIERS, INC., *Petitioners,*

Against

ZACHARIAS RHODITIS, *Respondent*

BRIEF AMICUS CURIAE OF AMERICAN TRIAL LAWYERS ASSOCIATION

QUESTION PRESENTED

Should a permanent resident of the United States, who does not choose to apply for nor seek United States citizenship, conducting extensive regularly scheduled shipping operations from the United States, enjoying all of the privileges and immunities of United States citizens, be immunized from the duties and obligations provided for in the Jones Act applicable to American shipowners operating foreign flag vessels?

STATEMENT OF THE FACTS

Petitioner, Hellenic Lines, Ltd., a corporation organized under Greek Law, owner and operator of twenty-three (23) seagoing vessels was at all material times the operator of the HELLENIC HERO, owned by the Transpacific Carriers Corporation, a corporation organized under the Laws of Panama with no offices nor doing any business in Panama. All of the stock of Transpacific Carrier Corporation is owned by Hellenic Lines, Ltd. Ninety-Six percent (96%) of the stock of Hellenic Lines, Ltd. is owned by its general manager, Pericles Callimanopoulos who, together with his family, have been since 1945, and are permanent residents of the United States, conducting all of the corporate business of the Hellenic Lines, Ltd. from the City of New York where a majority of its employees are employed. It owns dock facilities in Brooklyn, New York and one hundred percent (100%) of its revenue is derived from cargo being shipped out of or brought into the United States. His son, George Callimanopoulos and his family, also permanent residents of the United States, was until recently, director of the Hellenic Lines, Ltd. The base of its operation is in the United States. Petitioner, being engaged in foreign commerce of the United States in compliance with the provisions of the Shipping Act, § 801, Title 46 U.S.C.A., has filed its tariffs and other documents required by the United States Maritime Commission. *C. H. Leavell & Co. v. Hellenic Lines, Ltd.* 1969 A.M.C. 2177. Pericles Callimanopoulos, like Hellenic Lines, Ltd., has his roots within the United States. Its ships, including the HELLENIC HERO make regular trips from and to the United States on a fixed schedule. Petitioner, as a resident of the United States, has and still uses the courts of the United States to en-

force its rights and enjoys all of the rights, liberties and immunities just as any citizen resident of the United States. The only difference between an American shipowner operating vessels under foreign flags, owned by corporations organized in foreign countries even though their base of operation may be in the United States, who are subject to the Jones Act, and Petitioner, is that its general manager, the dominant mind of the Hellenic Lines, Ltd., with complete power of attorney to do any and all things in governing its business chooses not to apply for and become a United States citizen. Respectfully, the courts should not permit one doing the extensive business Petitioner does in the United States to avoid compliance with United States laws, thus granting it an unfair advantage over American Shipowners operating foreign flag vessels over the same routes.

Even assuming the veracity of the so-called diplomatic status or representative to the United Nations claimed by its dominant meteor-general manager-and owner of 96% of its stock, does not change the basic premise that one conducting its major portion of its business in this country should be subject to its laws. But there is grave doubt that Pericles Callimanopoulos is either on a diplomatic mission or a representative or attached to the United Nations. See Exhibits A and B.

The Bill of Rights does not acknowledge any distinction between citizens and resident aliens. It extends its inalienable privileges to all "persons" and guards against any encroachment of those rights by Federal and State authorities. *Bridges v. Wixon*, 326 U.S. 135, 161, 65 S.Ct. 1443, 1445, 89 Law Ed. 2103 (1945). It would be strange and we respectfully submit, not in keeping with

Congressional intent for resident aliens, who voluntarily refuse to take out American citizenship, to have the full protection of the Constitution and Laws of the United States, yet be judicially placed in a more advantageous economic position than his American citizen shipowners counterpoint by immunizing him from the duties and obligations of the Jones Act,

While *Lauritzen v. Larsen*, 345 U.S. 571, 73 S.Ct. 921 (1953) in a general fashion sets out guide lines to be followed, they are neither immutable nor mechanically applied. All this Court did in Lauritzen was to evaluate points of contact. The seven talisman relied upon by the Second Circuit in *Tsakonites v. Transpacific Carriers Corp.*, 368 F.2d 426 (1967) are not exclusive, it permits other factors to be considered besides those enumerated in Lauritzen, which may be taken in consideration in determining whether they meet the "substantial" tests of Jones Act applicability. Among other existing here are:

1. The base of operation is primarily in the United States;

2. Hellenic Lines, Ltd. maintains its main and principal office in the United States where it has most of the employees;

3. Its vessels regularly depart from ports of the United States, including Mobile, Alabama, bringing in and taking out cargo on a continuous regular schedule;

4. Principal if not exclusive management of the operations of the Hellenic Lines' vessels are in the hands of the single majority stockholder (18,300

> shares owned out of a total of 20,000 shares), a legally admitted resident of and domiciled in the United States, eligible to apply for citizenship in the United States,

all weigh heavily to the application of United States laws, including the Jones Act. Under the factual situation existing here, common sense and reason dictate that Hellenic Lines, Ltd. should not be given an advantage by allowing it to insulate itself from the provisions of the Jones Act simply because it constructed a foreign intermediary while maintaining permanent resident alien status in the United States.

There can be no question that a resident alien is accorded substantially the same Constitutional protection as an American citizen. No genuine distinction exists between the two and none should be created by the courts. Nor should this shipowner be allowed to enjoy the protection of the laws of the United States without meeting its obligation and responsibility imposed by those laws upon citizens of the United States engaged in the same business. In short, a person or corporation with its principal office within the United States with its major, if not total, owner of the stock is its general manager and dominant mind, with its domicile in the United States, its vessels earning all of its monies from contacts exclusively with the United States, should not be permitted to enjoy all of the immunities and privileges of the United States without assuming its correlated obligations. Justice Murphy's concurring opinion in *Bridges v. Wixon*, 326 U.S. 135, 161, states:

> "The Bill of Rights is a futile authority for the alien seeking admission for the first time to these shores. But once an alien lawfully enters and resides in this country he becomes invested with the rights guaranteed by the Constitution to all people within our borders. Such rights include those protected by the First and the Fifth Amendments and by the due process clause of the Fourteenth Amendment. None of these provisions acknowledges any distinction between citizens and resident aliens. They extend their inalienable privileges to all 'persons' and guard against any encroachment on those rights by federal or state authority."

This is not a case wherein the owner, general manager and dominant mind of Hellenic Lines, Ltd. or any other principal beneficiary of a corporation is merely a visitor in the United States or his domicile here is not a permanent one, or that his domicile changes from time to time. Perhaps a different standard could apply under such circumstances. Here on the contrary, we have a permanent resident living here with his family approximately thirty (30) years, doing business within the United States, accumulating its profits and benefits from such business yet, seeks to shirk its responsibilities that his competitors, i.e., the American shipowner, must meet. To impose the duties and obligations of an Act of Congress (which does not expressly exclude non-citizens) on American citizens operating foreign flag ships but not to legally admitted resident aliens domiciled in the United States who enjoy substantially the same privileges and immunities as citizens, would be destructive of the purposes the Jones Act sought to accomplish. It constitutes the rankest type of discrimination against shipowner citizens of the United

States operating the American Merchant Marine and to American seamen.

This is precisely what Judge Medina held in *Bartholomew v. Universe Tankships, Inc.*, 263 F.2d 437 (C.A. 2nd Cir. 1959):

> "Accordingly, the decisional process of arriving at a conclusion on the subject of the application of the Jones Act involves the ascertainment of the facts or groups of facts which constitute contacts between the transaction involved in the case and the United States, and then deciding whether or not they are substantial. Thus each factor is to be 'weighed' and 'evaluated' only to the end that, after each factor has been given consideration, a rational and satisfactory conclusion may be arrived at on the question of whether all the factors present add up to the necessary substantiality. Moreover, each factor, or contact, or group of facts must be tested in the light of the underlying objective, which is to effectuate the liberal purposes of the Jones Act."
>
> * * * *
>
> "Although appellant contends otherwise, the practice in this type of case of looking through the facade of foreign registration and incorporation to the American ownership behind it is now well established. Gerradin v. United Fruit Co., 2 Cir., 1932, 6 F.2d 927, certiorari denied 287 U.S. 642, 53 S.Ct. 92, 77 L.Ed. 556; Carroll v. United States, 2 Cir., 1943, 133 F.2d 690; Zielinski v. Empresa Hondurena de Vapores, D.C.S.D.N.Y. 1953, 113 F.Supp. 93; Torgersen v. Hutton, 2nd Dept. 1934, 243 App. Div. 31, 276 N.Y.S. 348, affirmed, 1935, 267 N.Y. 535, 196 N.E. 566, certiorari denied, 1935, 296 U.S. 602, 56 S.Ct. 118, 80 L.Ed. 426. This is essential unless the purposes of the Jones Act are to be frustrated by

> American shipowners intent upon evading their obligations under the law by the simple expedient of incorporating in a foreign country and registering their vessels under a foreign flag."

In *Kyriakos v. Goulandris,* 151 F.2d 132 (1945), Judge Augustus Hand, an outstanding Admiralty Judge, said:

> "The intention of Congress to benefit American seamen would not be served by a contrary construction of the statute, since it would tend to encourage the hiring of foreign seamen in American ports in preference to American seamen because the aliens would not have the right of suit against their employers if injury should occur in those ports, while American seamen would. A similar line of reasoning has been set forth by the Supreme Court in Strathearn S.S. Co. v. Dillon, supra, 252 U.S. at pages 354, 355, 40 S.Ct. at pages 351, 352, 64 L.Ed. 607, in connection with another section of the statute."

The Fifth Circuit in *Arthur v. Compagnie Generals Transatlantique,* 72 F.2d 662, held "nationality" unimportant and the Jones Act applicable in an action brought by an alien stevedore injured on a foreign ship in the Canal Zone. *Uravic v. F. Jarka Co.,* 282 U.S. 234, 51 S.Ct. 111.

As Senator Jones stated in considering the act, one of the purposes of the 1920 amendment was to bring the foreign seamen up to a level with our seamen by giving them the same remedy in our own ports that our seamen have.

The decision of the Court of Appeals, if allowed to stand, would be an invitation to American shipowners to set up dummy corporations, transfer its stock to a legally

permanent alien resident within the United States and by such action immunize itself against the duties and obligations of the Jones Act, thus nullifying Congressional enactments. It would be an open invitation to use subterfuge and stock manipulations for the purpose of avoiding stringent shipping laws by seeking foreign registration eagerly offered by some foreign country. This Court recognized this danger in *Lauritzen*, supra, 345 U.S. 587 as follows:

> "* * * Confronted with such operations, our Courts on occasion have pressed beyond the formalities of more or less nominal foreign registration to enforce against American shipowners the obligations which the law placed upon them. . . ."

This Court refused to permit a somewhat similar subterfuge as bringing about a harsh and incongruous result in *Reed v. Yaka*, 373 U.S. 410, 83 S.Ct. 1349 (1963) and imposed liability on a shipowner who sought to immunize himself from liability for compensatory damages by bare boat chartering its vessel to the stevedoring company charged with discharging the cargo. It thus sought to limit its obligations under the exclusive provisions of the Longshoremen and Harbor Workers Act, Section 901, et seq., Title 33, U.S.C.A. even though its negligence or unseaworthiness may produce tragic injuries.

Judicial sanction for such double talk would frustrate the stated Congressional policy of equalizing operating costs between American and competing foreign vessels. (Hearings 85th Congress, First Session, March 27, 1957). To achieve the ends enunciated by Representative Bonner, Congress has sought to eliminate or at least reduce, the

competitive advantage of foreign flag operators by equalizing operating costs of American and foreign flag ships. This was accomplished by the enactment of the LaFollette Seamen's Act of 1915 (28 Statute U.S.C.A. 85) and its amendatory provisions contained in the Jones Act of 1920, (41 Statute 1007, 46 U.S.C.A. 688 et seq.). The hearings which preceded the passage of both Acts contain frank discussions of Congressional motives namely, elimination of foreign competition by equalization. (See Harold on "Some Problems Arising Out of Foreign Flag Operations", 28 Fordham Law Rev. 295-305 et seq.).

The extensive operation of this Respondent can be found in the record of *Hellenic Lines, Limited v. Gulf Oil Corporation,* 340 F.2d 398. See Note 1 on Page 400 (2nd Cir. Docket #28885). In that case the same Mr. Callimanopoulos testified as follows:

> "I tell you it's as if you asked if the city informed citizens that there is a ferry running on a specific hour from here to Staten Island. It's the same thing. We're here, established from before the war, and after the war, with nothing but regular services. And there is no person in the trade who does not know what we are doing."

There can be no serious question of substantial contacts of Hellenic Lines with the United States, if, as stated in Gilmore & Black, page 388, Section 6-64:

> "Finally American shipowners will not be allowed to evade their obligations under American law by taking out a nominal foreign registry, directly or through the devise of a wholly owned or controlled foreign subsidiary, and without regard to terms of the shipping articles stipulating that the rights of crew mem-

bers are to be governed by the law of the country of the registry."

it ought not to be permitted here.

It is abundantly clear under the facts of this case, that the Hellenic Lines, Ltd. and Callimanopoulos have substantial contacts with the United States. Its shipping and operations are controlled by persons and firms largely based in the United States.

Except for *Tsakonites,* supra there is no Appellate decision denying Jones Act coverage to foreign seamen injured in the United States port where the employer has substantial contacts with the United States and the principal owner of the stock of the operating corporation was and still is a legally permanent resident of the United States. *Ventiadis v. C. J. Thibodeaux & Co.,* 295 F. Supp. 135. *McCulloch v. Sociedad Nacional, etc.,* 83 S.Ct. 671, 372 U.S. 10 (1963) is not controlling. In that case this court simply held that the National Labor Relations Act does not apply.

Unless this Court lays down the rule that notwithstanding Respondent's extensive operation within the United States, its regular schedule of ships bringing in and taking out cargo from the United States, the controlling manager and owner of its business a legally permanent resident alien within the United States is none the less immunized of the duties, and obligations imposed on the American shipowners simply because through his own volition he fails to apply for and become a citizen of the United States, then it must follow that a permanent resident of the United States, conducting his business within the United States, must subject himself to the same duties and obligations as an American shipowner.

CONCLUSION

To grant such unequal advantages constitute a delusion if not distraction of Congressional intent to equalize in part, at least, the disparity between foreign shipowners and those operated by American interest, and the danger of erosion of these established principles which Petitioners seek here to establish, presents compelling reasons for this Court to affirm the judgment of the United States Court of Appeals for the Fifth Circuit.

Respectfully submitted,

ARTHUR J. MANDELL
of
MANDELL & WRIGHT

19th Floor
First National Life Building
Houston, Texas 77002

For and on behalf of the American Trial Lawyers Association

EXHIBIT A

DEPARTMENT OF STATE
Washington, D.C. 20520

FEB 19 1968

February 15, 1968

Mr. Arthur J. Mandell,
Mandell & Wright,
Seventh Floor South Coast Building,
Main at Rusk Street,
Houston, Texas.

Dear Mr. Mandell:

Replying to your letter of February 14, a check of the records in the Office of the Chief of Protocol failed to produce any evidence of Mr. Pericles Callimanopoulos now being or having been accredited to the United States in any capacity as a diplomatic officer of the Greek Government.

Sincerely yours,

Harold A. Pace

Harold A. Pace
Assistant Chief of Protocol

EXHIBIT A

UNITED STATES MISSION TO THE UNITED NATIONS

799 UNITED NATIONS PLAZA
NEW YORK, N. Y. 10017
YUkon 6-3620

APR 3 - 1968

April 1, 1968

Mr. Arthur J. Mandell
Mandell & Wright
Attorneys and Counselors
Seventh Floor South Coast Building
Main at Rusk Street
Houston, Texas 77002

Dear Mr. Mandell:

I am very sorry there has been such a long delay in responding to your inquiry concerning Mr. Pericles Callimanopoulos. We had to check several possible sources of information. Mr. Callimanopoulos does not appear to have any representative status or other connection with the Permanent Mission of Greece to the United Nations.

I trust this will answer your query.

Sincerely yours,

Bess N. Trinks

Bess N. Trinks
Privileges and Immunities
Officer

EXHIBIT B

DEPARTMENT OF STATE

Washington, D.C. 20520

June 19, 1969

Mr. Hoyt S. Haddock
Executive Director
AFL-CIO Maritime Committee
100 Indiana Avenue, N.W.
Washington, D.C. 20001

Dear Hoyt:

This will refer to your letter of June 17 regarding Pericles G. Callimanopoulos. I have been informed by the Protocol Office of the United Nations that they have no record of Mr. Callimanopoulos serving in any capacity at the United Nations.

Sincerely yours,

Oscar H. Nielson

Oscar H. Nielson
Executive Director

EXHIBIT B

DEPARTMENT OF STATE
Washington, D.C. 20520

RECEIVED
JUN 25 1969

June 23, 1969

Mr. Hoyt S. Haddock
Executive Director
AFL-CIO Maritime Committee
100 Indiana Avenue, N.W.
Washington, D.C. 20001

Dear Mr. Haddock:

Your letter of June 17, 1969, requesting information whether Mr. Pericles G. Callimanopoulos is a representative of the Greek Government in the United States has been brought to my attention.

The files of the Office of Protocol failed to disclose any registration, present or past, under the name of Mr. Pericles G. Callimanopoulos. This would indicate that Mr. Callimanopoulos has not been recognized as a representative of the Greek Government in the United States.

Sincerely,

Marion H. Smoak
Assistant Chief of Protocol